

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - CINCINNATI**

THOMAS BEARUP, JR. et al.,	:	Case No. 1:21-cv-151
	:	
Plaintiffs,	:	Judge Matthew W. McFarland
	:	
v.	:	
	:	
CINTAS CORP. NO. 2,	:	
	:	
Defendant.	:	
	:	
	:	

ORDER OF DISMISSAL

This matter is before the Court on Defendant's Motion to Dismiss Plaintiff Andrea Carter (Doc. 105.). On May 3, 2024, Plaintiffs' counsel filed a Suggestion of Death (Doc. 92) notifying the Court that Plaintiff Andrea Carter had passed away and that her successor or representative was not prepared to file a motion for substitution. At this time, no successor or representative of Plaintiff Carter has filed a motion for substitution, and over 260 days have passed since Plaintiffs' counsel filed the Suggestion of Death (Doc. 92.)

Federal Rule of Civil Procedure 25(a) provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party." Fed. R. Civ. P. 25(a). The rule further provides that "[i]f the motion [to substitute] is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Id.* When a party files a suggestion of death and serves it on all other

parties, the 90-day clock begins running. *Premoh v. City of Cincinnati*, Case No. 1:15-cv-265, 2016 WL 2858900, at *5 (S.D. Ohio May 13, 2016). If no motion to substitute a party is filed within 90 days of the suggestion of death, then Rule 25 mandates that the court dismiss the action. *Id.*

Accordingly, as no motion to substitute has been filed within 90 days since Plaintiffs' counsel filed the Suggestion of Death (Doc. 92), the Court **GRANTS** Defendant's Motion to Dismiss Plaintiff Andrea Carter (Doc. 105.) Plaintiff Andrea Carter's claims are **DISMISSED** for failure to substitute a party pursuant to Fed. R. Civ. P. 25(a)(1).

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: 
JUDGE MATTHEW W. McFARLAND